
(2012) 05 MP CK 0022

In the Madhya Pradesh High Court

Case No : Arbitration Appeal No. 28 of 2012

Shiva Corporation India Ltd.

APPELLANT

Vs

M.P. State Mining Corporation Ltd.

RESPONDENT

Date of Decision : 17-05-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 17, 37, 9
Contract Act, 1872 — Section 56

Citation : (2012) 3 MPLJ 687

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

**Advocate : Kishore Shrivastava, Assisted By Kunal Thakre, for the Appellant;
Naman Nagrath, Assisted By Swapnil Sohagura, for the Respondent**

Final Decision : Dismissed

Judgement

K.K. Trivedi, J.—This appeal u/s 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act of 1996 for brevity), is directed against the order dated 19-4-2012, passed by the X Addl. District Judge, Bhopal in Arbitration Case No. 17/2012, whereby the application filed by the appellant u/s 9 of the Act has been dismissed. Facts giving rise to filing of this appeal are that the respondent-M. P. State Mining Corporation Limited (hereinafter referred to as the respondent Corporation for short) has granted into a contract agreement of mining lease to the appellant, granting mining lease for sand quarry for the period with effect from 6-4-2010 to 5-4-2012. Undisputed facts were that the appellant was required to pay the licence fee and royalty for quarry and the transportation of the sand in different mines situated in different districts. There were certain conditions mentioned in the agreement and Clause-17 of the contract agreement prescribes the procedure for extension of the mining period. The same is reproduced as translated in English for the purposes of appreciation as under:--

17. After the period of contract is over, in specific circumstances with the mutual

consent, the Board of Director of the Corporation would be empowered to extend the period of contract on terms and conditions so fixed.

2. Clause-23 of the contract agreement deals with force majeure. Contingency in which the period spent on account of certain natural calamities, unavoidable circumstances, war etc. was to be excluded from the contract period. The specific provision was made that the period required in the said eventualities would be excluded from the contract period in favour of the contractor by keeping the contract under abeyance for the said period.

3. It is contended by the appellant that there were frequent Road Jams on account of which the appellant was not in a position to extract and transport the sand as per the minimum requirement during the said period and since it was beyond the control of the appellant, a prayer was made for keeping the contract period in abeyance for the period spent in such eventualities. An appropriate application was made in this respect before the respondent Corporation authorities seeking application of Clause-23 (force majeure), but the said application dated 13-12-2010 filed by the appellant was rejected by the respondent Corporation on 5-5-2011. This has given rise to a dispute and, therefore, as per the terms mentioned in Clause-24 of the Contract agreement, the dispute was referred before the sole Arbitrator, Since the period of contract was coming to an end, an application was filed by the appellant before the sole Arbitrator u/s 17 of the Act for grant of interim protection and considering the said application, the Arbitrator passed an order on 27-3-2012 in Arbitration Case No. 2/2011 directing to maintain the status-quo with respect to the contract granted to the appellant for a period of six weeks. Despite passing of this order, the respondent Corporation issued an order on 5-4-2012 and directed that since the contract period of appellant was coming to an end in the midnight of 5-4-2012, the work of extracting the sand be started by the departmental authorities of the respondent Corporation with effect from 6-4-2012. Since such an order was issued, the order of Arbitrator was not complied with, there was no provision for getting the order of Arbitrator executed, an application u/s 9 of the Act was filed by the appellant before the Principal Court i.e. the Court of the District Judge, Bhopal, for grant of an interim injunction. In such an application, the facts were categorically stated relating to passing of the order by the Arbitrator and the violation of the order of the Arbitrator by the respondent Corporation and a prayer was made that the direction be issued to the respondent Corporation not to violate the order of the Arbitrator and to maintain the status-quo with effect from 6-4-2012 for a period of six weeks.

4. It is contended that a reply to the said application was submitted by the respondent-Corporation, claim made by the appellant was opposed and without looking to the provisions of the Act, such an application of the appellant was dismissed by the impugned order by the Court below, therefore, this appeal was required to be filed.

5. This appeal was entertained by this Court and an interim stay was granted on

10-5-2012. Immediately an application was made by the respondent-Corporation for vacating of this interim order, therefore, the appeal was heard on merits.

6. It is contended by learned Senior counsel for the appellant that the provisions of section 9 of the Act, specifically prescribes the powers conferred on the Court to direct observance of certain interim protection so that in a proceeding pending before the Arbitrator, no prejudice is caused to the claimant. It is contended that such wide powers are not restricted by the orders passed by the Arbitrator. Since section 17 of the Act, gives the power to the Arbitrator to pass the interim order, but there is no provision for enforcement of such an order passed by the Arbitrator, appellant was right in approaching the Court below for passing of appropriate orders. It is further pointed out that the sole discretion was not rested with the respondent-Corporation in the matter of grant of extension as was prescribed under Clause 17 of the contract agreement, but the power was to be exercised keeping in mind the specific provisions of Clause-23 of the contract agreement. There were certain circumstances which were pointed out on account of which the appellant could not extract sand in the required quantity nor could it be transported and such circumstances and causes were beyond the control of the appellant, therefore, it was necessary on the part of the respondent-Corporation to exclude the said period from the contract period which was spent in such eventualities. Had it been done in appropriate manner, there was no question of any dispute, but since such an application made by the appellant was wrongly rejected, there was no other remedy available to the appellant to raise a dispute. After raising of the dispute, prayer was made for grant of interim protection before the Arbitrator which was granted, but the same was violated, therefore, the application was rightly made by the appellant before the Court below.

7. Taking this Court to the provisions of section 56 of the Contract Act, learned Senior counsel for the appellant has further contended that if a contract become impossible to be performed in certain circumstances, as is illustrated in illustration (e) given under the above section 56 of Contract Act, the said contract would be void for the said period and its enforcement under the law was not permissible. This being so, specific provision was made in Clause-23 of the contract agreement for force majeure and this particular aspect was required to be kept in mind by the respondent-Corporation. Having failed to do so, it was not open to the respondent-Corporation to oppose the claim made by the appellant before the Court below, but the said reasonable claim made by the appellant was opposed tooth and nail. It is further pointed out that extraction of sand was necessary for the respondent-Corporation and to protect the financial loss to all concerned, appellant was entitled to be allowed to extract the sand, but this particular aspect was not considered by the Court below, therefore, the order impugned is bad in law.

8. Per contra, it is stated by learned Senior counsel appearing for the respondent-Corporation that once the decision was taken by the Corporation not to grant

extension of period of contract, it was not open even to the Arbitrator or Court to extend the period of agreement. Drawing attention of this Court to an order passed by the Apex Court in case of Managing Director, M. P. State Mining Corporation vs. Abhijit Singh, Civil Appeal No. 3945-3946 of 2010, decided on 28-4-2010, it is contended by learned Senior counsel for the respondent-Corporation that the respondent-Corporation alone was the competent authority to extend the duration of the contract, the Arbitrator or the Court both have no power to extend the period of contract, therefore, the order was improperly passed by the Arbitrator. It is contended that the said order is set aside by the Court below and a writ petition has been filed by the appellant herein against the said order of the Court below, which is pending consideration before this Court. As per the law, if only the respondent-Corporation was competent authority to extend the period of contract and if the period of contract was not extended, the respondent-Corporation was competent to take back the mines from the appellant and nothing wrong is committed in this respect. It is contended that such submissions made by learned Senior counsel for the appellant cannot be considered in this appeal as after passing of order by the Court below, the mining work was started by the respondent-Corporation and the mining was being done. It is pointed out that there is acute shortage of sand for which the supply is required to be made. Demand has been made in this respect and, therefore, neither this appeal is maintainable nor the interim order is to continue. It is further contended that a huge loss is being caused to the State Government because of the interim stay granted by this Court and, therefore, the appeal be dismissed.

9. Heard learned Senior counsels for the parties at length and perused the record.

10. Undoubtedly, there was a provision made in the contract agreement for extension of period of contract. However, the said period is to be extended only by the order of the Board of Directors of the respondent-Corporation. The law is also clear in this respect. It is the right of the parties to the agreement to get the period of contract extended. Intervention by any third person including the Court is not permissible. If a prayer is made by one party to the contract for extension of period of contract and the same is rejected by the other party, having authority to grant such a prayer, Court can look into only the reasons for rejection of such a prayer and may decide whether the reasons were justified or not. However, the Court would not sit in the place of the party to the contract agreement to get the period of contract agreement extended and, as such, orders in this respect cannot be passed by the Court. This is what the true reasons of holding by Apex Court that the contract period cannot be extended by anybody except the authorities mentioned in the agreement itself. If the prayer made in the application filed u/s 9 of the Act is examined, it would be clear that any such prayer for grant of interim protection or interim injunction will amount to extension of contract period which according to law cannot be granted by Court.

11. Now coming to the other aspect whether any arbitrary action was taken by the respondent-Corporation in rejecting the application of the appellant or not? The fact remains that such a dispute is pending consideration before the Arbitrator. Reason as to why such an extension was necessary, have to be demonstrated by adducing evidence. In rebuttal, the respondent-Corporation can produce the evidence to show that order was rightly passed by it rejecting such a prayer of the appellant. In the dispute filed before the Arbitrator itself, the appellant has categorically made a demand for payment of compensation to the tune of Rs. 12 Crore with interest @ 15% per annum. This has to be adjudicated by the Arbitrator whether any actual loss is caused to the appellant on account of passing of an order by the respondent-Corporation refusing to grant extension of contract period to the appellant or not. The Arbitrator would be a better authority to decide such a claim of the appellant. Further the appellant not only has itself asked for monetary compensation, in case of any loss to the appellant, damages can be granted by the Arbitrator in adequate manner in case such a loss is proved. Merely because an application was made for extension of contract period and the same was rejected by the respondent-Corporation, it cannot be said that any loss is caused to the appellant. The appellant had right to extract the sand only upto the period for which the contract was assigned to the appellant. In view of this, it cannot be said that the application of the appellant was not rightly considered by the Court below. This being so, there is no force in this appeal.

12. The other aspect is that in some other cases respondent-Corporation has granted extension of contract period till the new contract is created for mining in certain areas. It is stated by learned Senior counsel for the appellant that such an issue can be looked into by the respondent-Corporation in case of the appellant also. However, again this would be exclusive authority of the respondent-Corporation to consider such a prayer of the appellant. If such a claim is made, it will be open to the respondent-Corporation to consider such prayer of the appellant in appropriate manner without being prejudiced with the proceedings, which have been initiated by the appellant against the respondent-Corporation. It will be necessary for the respondent-Corporation to maintain an account of quantity of sand extracted from all the quarries and the amount of royalty as also the cost of the mineral on day today basis, during the period the contract is not assigned to anybody else, or for the period for which the claim is made by the appellant for extension of contract period, for the purposes of assessment of damages, if any suffered by the appellant. In view of the aforesaid, this appeal fails and is, hereby, dismissed. The interim order dated 10-5-2012 stands vacated automatically. However, there shall be no order as to costs.